

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

DIVINE SON IRVIS,

Defendant.

CR15-205

ORDER

THIS MATTER comes before the Court on defendant's second motion for compassionate release, docket no. 54. Having reviewed all papers filed in support of, and in opposition to, the motion, the Court enters the following order DENYING the motion.

Background

In August 2015, defendant Divine Son Irvis pleaded guilty to (i) possession of heroin with intent to distribute, and (ii) being a felon in possession of a firearm. See Plea Agr. (docket no. 20). In January 2016, he was sentenced to 144 months in the custody of the Federal Bureau of Prisons ("BOP"). See Judgment (docket no. 31). Defendant is currently incarcerated at the Federal Correctional Institution in Sheridan, Oregon, and has a projected release date of October 12, 2025. See Probation Memo. at 1 (docket no. 58). Defendant seeks modification of his term of imprisonment pursuant to 18 U.S.C.

§ 3582(c)(1)(A)(i) on the ground that his services are needed to care for his ill mother and minor child. Defendant's previous motion for compassionate release was also predicated, in part, on his familial circumstances, and the Court denied the earlier motion by Order entered March 3, 2021, docket no. 52.

Discussion

A sentence is generally considered final and may not be altered except in limited circumstances. *See* 18 U.S.C. § 3582(b); *see also* *Dillon v. United States*, 560 U.S. 817, 824 (2010). Pursuant to the First Step Act of 2018, however, a defendant may request a reduction in the term of incarceration after exhausting administrative remedies. *See* 18 U.S.C. § 3582(c)(1)(A). The parties agree that Divine Son Irvis has satisfied the exhaustion requirement, and he must now establish "extraordinary and compelling reasons" justifying a reduction in his sentence. *Id.* at § 3582(c)(1)(A)(i). Among the types of "extraordinary and compelling reasons" recognized in the United States Sentencing Guidelines ("USSG") are:

(A) The death or incapacitation of the caregiver of the defendant's minor child

(C) The incapacitation of the defendant's parent when the defendant would be the only available caregiver for the parent.

USSG § 1B1.13(b)(3). Irvis attempts to invoke both of these provisions, but as to the latter, he has not made the requisite showing that he is the only available caregiver for his 65-year-old mother, Kathleen Anderson, who is an alcoholic and has dementia. Irvis's sister and her 16-year-old daughter reside with Anderson, *see* Probation Memo. at 2 (docket no. 58), and although Irvis's sister struggles to deal with Anderson's behavior

1 and chronic intoxication, see Lashaunda Irvis Decl. at ¶¶ 4–9 (docket no. 54-5), she is
2 nevertheless an available caregiver. See *United States v. Crocker*, No. 16-cr-122, 2020
3 WL 7079132, at *3 (D. Or. Dec. 1, 2020) (“Most district courts agree . . . that when a
4 defendant has not shown that he or she is the only available caretaker [of a sick parent],
5 compassionate release is not warranted.”).

6 Thus, the only potential basis for a sentence reduction involves the care of Irvis’s
7 7-year-old daughter, A.I., who resides with Anderson, as well as Irvis’s sister and his
8 teenage niece. The record does not reflect whether Anderson is A.I.’s legal guardian, and
9 Irvis has provided no information about the current whereabouts and status of A.I.’s
10 mother, Heidi Latimer, who was released from BOP custody on April 21, 2016. See
11 *United States v. Latimer*, W.D. Wash. Case No. CR06-233, Judgment (docket no. 116).
12 Irvis’s sister indicates that she does “what [she] can to take care of [her mother and A.I.]
13 but they are alone together a lot because [she] work[s] full time.” Lashaunda Irvis Decl.
14 at ¶ 6 (docket no. 54-5). A family friend looks after A.I. whenever possible, but works
15 night shifts and has other family obligations. See Moody Decl. at ¶¶ 2–3 (docket no. 54-
16 6). Irvis has two other children, both of whom are adults, but they deny having the ability
17 to serve as caregiver for A.I. See Kea Johnson Letter (docket no. 54-1); Jaelen Divine
18 Irvis Letter (docket no. 54-2). A.I.’s situation does seem unstable, but the Court is not
19 convinced that the only solution is an immediate release of Irvis, who has been in federal
20 custody since before A.I. was born and has never been A.I.’s primary caregiver.

21 In deciding whether to grant compassionate release, the Court must consider the
22 factors set forth in 18 U.S.C. § 3553(a). See 18 U.S.C. § 3582(c)(1)(A). Having done so,

1 the Court concludes that, even if Irvis could demonstrate the required “extraordinary and
2 compelling reasons” to support his motion, a reduction of his sentence would not be
3 consistent with § 3553(a), given the nature, circumstances, and seriousness of his crimes
4 of conviction, his history and characteristics, and the need to promote respect for the law,
5 afford adequate deterrence, and protect the public from future offenses Irvis is likely to
6 commit. See 18 U.S.C. §§ 3553(a)(1) & (2)(A)–(C). As the Court observed in denying
7 the earlier motion for compassionate release, Irvis is a repeat offender, having previously
8 been convicted of drug-trafficking offenses, and having violated the terms of supervised
9 release in a prior case by committing the crimes in this matter, *i.e.*, possessing a firearm
10 in connection with yet another offense involving a controlled substance. Order at 4 n.2 &
11 7–8 (docket no. 52); see PSR at ¶¶ 18, 35, & 41 (docket no. 23). He has at least three
12 convictions for assault, one involving his then-pregnant girlfriend, the mother of his now
13 19-year-old son. See PSR at ¶¶ 37-39 & 62 (docket no. 23). In addition, Irvis has been
14 far from a model prisoner, accruing six violations while in BOP custody, for assaultive,
15 insolent, and substance-related behavior. See Def.’s Ex. 10 (docket no. 54-10). Although
16 Irvis has made recent efforts toward reform,¹ the Court is not persuaded that Irvis is ready
17 to reside with someone with the level of alcohol addiction, as well as cognitive decline,

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20 ¹ In August 2021, Irvis assisted another inmate who was experiencing a medical emergency and
21 received a \$50 reward for “heroism.” See Monetary Special Award Recommendation (docket
22 no. 60-1). In November 2022, Irvis completed a two-week basic cognitive skills program, and in
February 2023, he participated in an anger management course. Def.’s Ex. 9 (docket no. 54-9).
Irvis enrolled in the Residential Drug Abuse Program, but the record does not reflect whether he
has yet finished the typically nine months of treatment.

1 that his mother has. The Court has serious concerns that Irvis will relapse, and concludes
2 that the risk of reoffense on Irvis's part, if he is released prematurely from prison, poses a
3 serious danger to the community.

4 **Conclusion**

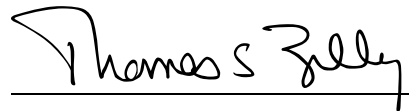
5 For the foregoing reasons, the Court ORDERS:

6 (1) Defendant's second motion for compassionate release, docket no. 54, is
7 DENIED; and

8 (2) The Clerk is directed to send a copy of this Order to all counsel of record.

9 IT IS SO ORDERED.

10 Dated this 13th day of December, 2023.

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13 Thomas S. Zilly
14 United States District Judge
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